

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

SOLARTEC, INC.

and

SEKELY INDUSTRIES, INC.

Cases Nos. 8-RC-16070
 8-RC-16071

A Single Employer

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA

Petitioner

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTIONS

Petitions were filed under Section 9(c) of the National Labor Relations Act, as amended, and a hearing was held before hearing officers of the National Labor Relations Board.

The Board has delegated its authority in this proceeding to the undersigned, pursuant to Section 3(b) of the Act.¹

The following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.²

¹ Upon the entire record in this proceeding the undersigned finds:

The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction. The labor organization involved (Petitioner) claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

All full-time and regular part-time production and maintenance employees employed by the Employer at its Solartec, Inc. facility, located at 250 Pennsylvania Avenue, Salem, Ohio facility, including CAD, janitor, construction, machinist, tryout, quality control employees, and leaders, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

All full-time and regular part-time production and maintenance employees employed by the Employer at its Sekely Industries, Inc. facility, located at 250 Pennsylvania Avenue, Salem, Ohio facility, including die construction, tryout, machinist, tool grinder, CAD, welder, tool crib, maintenance, indirect, truck driver, sweeper, inspector and design, shipping and receiving employees, and leaders, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

PROCEDURAL HISTORY

On February 14, 2001, I issued a Decision and Direction of Elections in this matter. Three issues were addressed in that decision. First, whether Sekely and Solartec were a single employer, as contended by the Petitioner, contrary to the Employer's position. Second, whether the "leaders"³ at Sekely were 2(11) supervisors under the Act as the Employer contended, contrary to the Petitioner's position. Finally, whether the "leaders" of Sekely and Solartec were 2(11) supervisors under the Act as the Employer contended, contrary to the Petitioner's position.

On March 9, 2001, the Employer filed its Request for Review of the Decision and Direction of Elections challenging my conclusions that Sekely and Solartec were a single employer, and that the "leaders" at both Sekely and Solartec were employees, not statutory supervisors. On March 28, 2001, the Board denied the Employer's Request for Review.

² There are now fewer than 40 employees in the Solartec unit and fewer than 200 employees in the Sekely unit. Based on the parties' agreement, I found the two units set forth above to be appropriate in the Decision and Direction of Elections which issued on February 14, 2001.

³ The Employer changed the title of the individuals whose supervisory status is at issue in this case at both Sekely and Solartec from "leader" to "supervisor" after the Petitioner filed its petitions. After the issuance of my original decision the Employer withdrew the "supervisor" title from some of those same individuals. The record does not make clear what, if any, title those individuals now possess. To limit confusion over the term "supervisor" in connection with the classification of individuals at issue in this matter, I will, whenever possible, refer to these individuals as "leaders" or "leader/supervisors."

On May 29, 2001, the Supreme Court issued its decision in **NLRB v. Kentucky River Community Care**, 121 S. Ct. 1861 (2001). There, the Court upheld the Board's rule that the burden of providing Section 2(11) supervisory status rests on the party asserting it. However, the Court rejected the Board's interpretation of "independent judgment" in Section 2(11)'s test for supervisory status, i.e., that registered nurses will not be deemed to have used "independent judgment" when they exercise ordinary professional or technical judgment in directing less-skilled employees to deliver services in accordance with employer-specified standards. Although the Court found the Board's definition of "independent judgment" as described above to be inconsistent with the Act, it recognized that it is within the Board's discretion to determine, within reason, what scope or degree of "independent judgment" meets the statutory threshold. In discussing the tension in the Act between the Section 2(11) definition of supervisors and the Section 2(12) definition of professionals, the Court also left open the question of the interpretation of the Section 2(11) supervisory function of "responsible direction," noting the possibility of "distinguishing employees who direct the manner of others' performance of discrete tasks from employees who direct other employees." **Kentucky River**, 121 S. Ct. slip op. at 14.

Thereafter, on September 25, 2001, in light of **Kentucky River**, the Employer filed a Motion for Reconsideration of the Board's Order denying review of the Decision and Direction of Elections. On October 25, 2001, Counsel for the Regional Director filed a Motion to Remand Cases to the Regional Director and to Reopen the Record. On November 7, 2001, the Employer filed its Memorandum in Opposition to Regional Director's Motion to Remand.

On November 14, 2001, the Board issued its Supplemental Decision and Order remanding this proceeding to the Regional Director for further consideration and to reopen the

record, and to take additional evidence on the issue of whether the Employer's production leaders "assign" and "responsibly direct" other employees and on the scope or degree of "independent judgment" used in the exercise of such authority.

The hearing reopened on January 14, 2002 and closed on February 20, 2002.

Thereafter, the Employer filed a brief which I have considered.

Post-(Initial) Decision Changes

(a) (Sekely Die-Construction Dept.)

Between issuance of my initial Decision and Direction of Election and the date the hearing reopened the Employer has made a number of changes in its organization chart and other operations which arguably impact my findings as to the inclusion or exclusion of various individuals.⁴ For example, the Employer reduced the number of work bays in the Sekely die-construction department from nine to six. After this change in its operation, Sekely reduced the number of crew leaders in die-construction from ten (10) to six (6). Those six are: Steve Scheiben, Don McKinney, Dave Ketler, Bud Sanor, Rick Wilson and former first shift construction foreman Paul Leider, whose former position remains vacant.⁵

The parties adhere to their respective positions concerning die-construction leaders as taken at the initial hearing. Thus, the Employer would exclude all leaders in the Sekely die construction department on the basis that they are 2(11) supervisors. The Petitioner maintains they are employees and eligible to vote in any election directed.

⁴ To the extent that testimony taken at the re-opened hearing does not establish changes in the duties and authority of individuals whose status is in dispute, I shall rely on testimony taken at the initial hearing to assist me in determining the inclusion or exclusion of such individuals in any election directed herein.

⁵ Of the remaining four (4) former die construction leaders, three: Cliff Mulhman, Rohn Riley and Dale Metzgar have transferred to front office positions, out of the units. They parties agree that they are not eligible voters and I so find. The fourth former leader, Dean Gauding, is no longer employed.

Several leaders provided testimony concerning their duties and powers as exercised after February 14, 2001. Steve Scheiben testified that he now has five die makers assigned to his crew on days and three die makers on night shift. Scheiben continues to attend hourly progress meetings, where he has to justify extra hours spent on jobs as well as explain why dies are behind schedule. Scheiben has learned from experience that some of his crew members are more proficient at performing particular jobs than other crew members, and he takes that into account when making task assignments within his crew.

Whenever Scheiben has more die makers in his bay than he needs he notifies Die Construction Superintendent Satterfield⁶ so Satterfield can reassign the extra employees to other bays on a temporary basis. Scheiben can send employees to the small machine department, but the work they perform there is merely a continuation of the work they began in Scheiben's bay.

Regarding the assignment of work, Scheiben testified that his former supervisor, Homer Sanor, informed him that his duties were to make sure that all the men in the bay "had a job to work on, they had everything they needed, had all the information they needed, answer any questions they had, or problems."

Die makers on Scheiben's crew routinely inquire of him concerning the process and equipment which will be used to make a particular die. It is then up to Scheiben to find out which machines or other equipment are available. That information in large part determines the process that will be used to make the die.

Thus, Scheiben testified that there is a general order to building a die. However, it also depends on what machines the Employer needs to keep busy, machine availability, what materials are on hand, and who is best suited to perform the work.

⁶ Satterfield replaced former die construction superintendent Homer Sanor who retired some time after the initial hearing in these matters.

Approximately thirty percent of the time Scheiben keeps a die for himself. He then makes all assignments in connection with that die. The other dies are delegated by Scheiben to the more experienced die makers in his crew. Unless the allotted hours are insufficient to finish a particular die, Scheiben would ordinarily have had no reason to consult with Homer Sanor or Paul Leider (when they still supervised him) or Jerry Satterfield.

Scheiben regulates priorities within his bay, but upper management regulates the entire shop. For example, the Plant Manager or Project Manager will tell Scheiben the date that a die must be delivered to the tryout department. Other than those instances when Scheiben's crew are working on dies that were started in the die construction department, Satterfield, rather than Scheiben, will assign Scheiben's crew members to work on a temporary basis in the small machine department. Scheiben checks the work of some die makers every day, others not so often. He also makes "judgment calls" as to which employees work well together. Ten times during the last year Scheiben has requested permission for his crew to work overtime, and he has never been denied permission. All "die routing" is still done in the office, according to Scheiben, it has not been delegated to the die supervisors. There are bar codes for every step in building a die.

After Petitioner filed its petitions in May 2000, Rick Wilson, another leader in die construction, was informed by management that he now had the authority to discipline employees. Wilson was made aware of his authority to assign work to employees when he was made a leader. Homer Sanor, his then supervisor, was the manager who so informed Wilson. Wilson also testified that Satterfield stops by once a week to check on the status of all the jobs. Wilson estimated that only about twenty-five percent of his crewmembers during the last seven years have required constant, specific assignments from him.

Wilson testified that due dates for dies are established by the customer. Jerry Satterfield relays the “press schedule” to Wilson so he knows when his dies are due at the press, i.e. tryout department. Although Wilson is aware of his supposed disciplinary authority he has never exercised that authority to discipline any employees. Nor does Wilson have knowledge of any other leader/supervisor issuing discipline to an employee. Wilson recommended overtime three times during the past year, but in each instance Homer Sanor actually authorized the overtime.

Randy Miller, a high single A die maker, testified that he was taught the process of building a die during his apprenticeship program. He noted that some leaders just naturally “micro-manage” more than others. Miller testified that a single A die-maker can handle one die at a time. A double A can usually keep five or six dies all moving at the same time. According to Miller, being a double A is a training ground for becoming a leader.

Plant Superintendent Dave Herbert’s Testimony

David Herbert, Plant Superintendent at Sekely, has been with the Employer for approximately thirty years. At the re-opened hearing, Herbert testified that Richard J. Sekely, previously the President and CEO of Sekely, has not held those positions since the summer of 2001. James Sekely is now occupying both of those positions. As noted previously, Jerry Satterfield is currently the Die Construction Superintendent, replacing Homer Sanor who retired. Satterfield reports directly to Herbert. Herbert estimates that current business levels overall are only fifty to sixty percent of what they were in the recent past.

Herbert noted that various die-construction leader-supervisor positions have been eliminated since my original decision: Crew leader Kalding was laid-off; Muehlman became a Project Manager; Riley was transferred to die processing; and Metzger is now in purchasing.

According to Herbert, the employees who formerly made up the crews of the above-named leader supervisors have either been laid-off or relocated to another bay.

Other changes noted by Herbert include: Dan Davis is now the Tryout Department Superintendent; Bob McPherson, another tryout foreman, resigned his position and has not been replaced; and Arch Black and Rich Boyle are no longer machine supervisors.

Herbert claims that a major new Ford project will cause Sekely to “ramp up” to full capacity in all departments by the summer of 2002. He further speculated that this expected development will result in the reinstatement of supervisor positions in tryout, die construction, small machines and large machines. I note that the Employer offered no documentary evidence to support Herbert’s prediction of increased business in the summer of 2002.

Herbert’s testimony confirms that there are now six die construction bays in operation rather than the nine used at the time of my original decision.

According to Herbert, James Sekely authored job descriptions for leaders which were distributed in June 2000. Those descriptions state that leaders can discipline employees up to and including suspension. Herbert testified that prior to the job descriptions, leaders could effectively recommend discipline, but after the job descriptions were distributed, they had the authority to actually suspend employees. Herbert testified that he had discussions with James Sekely on this issue, and Herbert advised Sekely that, “we need to provide them with the authority to discipline as required, as opposed to just recommending.” According to Herbert, since the June 2000 job descriptions were distributed, there have been no direct suspensions by leader/supervisors, or suspensions based on their recommendations. Nor did Herbert have any knowledge of any written warnings issued by leader/supervisors.

(b) (Sekely Small Machine Department)

Small Machine Department

Jeff Foster, whose title is Small Machine Department Supervisor, has been employed as a leader supervisor in the small machine department for the past six years. There are a variety of machines used. Plant Manager Herbert tells Foster what the department's priorities are, based on customers' due dates. When work is slow in the department, Die Construction Supervisor Jerry Satterfield will borrow employees from Foster and put them to work in different bays. Dick Boyle, Wayne Strong, Darren Ackerman, Bill Bunn, Bob Dustman and Jeff Stiffle operate machines for Foster in the small machine department. Bill Burtlett, Joe Powers, Scott Laughlin and Chuck Andric are programmers in the department.

Foster testified that Plant Manager Herbert does not possess the technical competence to supervise the ten employees in the small machine department. Significantly, Foster decides how many employees can be released to work on the "floor," and he releases them strictly in order of seniority. Foster also attends the "hourly progress meetings." Foster testified that he, rather than Herbert, makes all decisions on which jobs will be worked on which machines.

All die-makers formerly received training in the small machine department. However, some employees were sent back to the die construction floor by Foster before they finished their training because they could not comprehend running the computers or operate under the pressure of running certain machines. Employee Don Kuner was one die maker whom Foster returned to the floor prior to the completion of his training. Foster testified that since July 2000, he is unaware of any change in his authority to assign work or to direct the members of his crew. Foster annually submits the budget for the small machine department. Foster also gives direction to the second shift in the small machine department by leaving written instructions.

The four computer programmers in the small machine department perform “shop floor programming.” “Gibbs” is the name of the computer language utilized by the programmers.

Joe Powers has worked twelve and one-half years at Sekely and has been a programmer in the small machine department for the past two years. Prior to that he was a single A die maker. According to Powers, Foster is his supervisor. During the last six months Powers has performed programming one hundred percent of his workday. Prior to that time his workday was split ninety percent programming and ten percent operating machines. Powers testified that a typical programming job is approximately one month long. Foster does not instruct Powers how to do the programming. According to Powers, Foster has never done any of the programming. At least once a day Foster will interrupt Powers to have him work on another job. Three other programmers, Burtlett, Laughlin and Andric, were trained by Powers. Chuck Andric is currently assigned to work on a machine because of the slow workload. According to Powers, without Jeff Foster, there would be no one supervising the four programmers in the small machine department.

Powers receives work assignments from Foster in a particular sequence determined by Foster. When Foster goes on vacation he leaves a “line-up” for Powers. Otherwise, when Foster is not present, Powers will make decisions for the other programmers because he is the senior programmer. When Foster is on vacation Powers will make job assignments to both programmers and machine operators.

The single issue in the small machine department is whether Jeff Foster is a 2(11) supervisor as asserted by the Employer, or is an employee as contended by the Petitioner. The Employer no longer asserts that former crew leader Rich Boyle is a 2(11) supervisor. Because of the reduction in business, Boyle is now working as a machinist doing manual labor. The parties

have stipulated that Boyle has none of the 2(11) indicia of a supervisor, and based on the entire record I accept that stipulation. Boyle is therefore eligible to vote in the election.

(c) **(Sekely Die-Tryout Department)**

Since the issuance of my initial Decision and Direction the die-tryout department also has undergone substantial change. It no longer contains the nine crew leaders whose status previously was in issue. Thus, Bob McPherson Sr. has retired and the Employer no longer claims that Mitch Miller, Jerry McBride, Dale Kaurich, Don Miller, Bill Hawkins, Dave Sebastian, Jeff Odey and Larry Pogue are supervisors. Both parties assert that the eight above-named individuals possess none of the 2(11) supervisory powers. The parties are in agreement that the eight individuals named are employees and I accept that agreement. Accordingly, they are eligible to vote in the election directed herein.

The Employer has also changed its position on three foremen in the tryout department who it previously asserted to be 2(11) supervisors. Bob McPherson, Jr., Curt Briggs and Dennis Davis have all been assigned manual labor positions in the die-tryout department, because of massive reductions in business volume. The parties are now in agreement that McPherson, Jr., Briggs and Davis are employees who are eligible to vote. Only Dan Davis and Robert Findling are the remaining 2(11) supervisors in the tryout department.⁷

Donald R. Miller has been a leader/supervisor in the die-tryout department at Sekely during the past two years. Miller testified that he could approve overtime and grant employees a day off. Before Miller was named a leader/supervisor the foreman would come by everyday and line up the crew with particular dies. That changed when Miller became a leader/supervisor because the foreman would check only every two or three days, and the leader/supervisors would

monitor the crew on a daily basis. Miller testified that not every job in tryout is a priority job. Rather, a job becomes “hot” when a customer moves up a due date.

Miller testified that in the summer of 2000, when the Employer advised him of his power to discipline, he also received authority in connection with overtime. Overtime at the Employer is not mandatory. Prior to the 2000 summer meeting, the foreman would line-up the overtime volunteers. Subsequent to that meeting, the leader/supervisors would inquire of employees whether they wanted to work overtime.

Miller testified that he never wrote-up an employee either before or after the summer 2000 meeting. Miller added that “write-ups” would go to a higher authority to be reviewed. Specifically, foremen would “check-up” on the discipline situation. After the summer 2000 meeting, Miller testified that he knew he had the authority to suspend employees, but he had to discuss the matter with the foreman before he informed the employer that he was suspended. Importantly, Miller understood that he could be overruled by the foreman regarding any suspension decision. Miller testified he believed that crew leader Jerry McBride disciplined an employee during the summer of 2001, but he could not offer any details.

Miller has not had a crew since the summer of 2001, and it appears that he performs rank and file work only. When Miller was an active leader/supervisor his foreman would come by everyday and inform him what the general assignments were, and then he would convey those assignments to the employees on his crew.

Miller also noted that during the week prior to his testimony he was in a group meeting with James Sekely. Sekely indicated that if the Employer began making money again, staffing patterns would return to where they had been before the end of 2002.

⁷ Davis is day shift foreman; Findling is night shift foreman. During the final day of the re-opened hearing the parties stipulated that Davis and Findling are 2(11) supervisors. Based on the entire record, I find sufficient

(d) **(Large Machine Department)**

Since the original hearing closed, three machines have been shut down in the large machine department. Arch Black currently works as a double A machine operator, the highest skill classification at Sekely. At some unspecified time in the past Black was designated “Major Machine Manager” and had authority to approve vacation and sick leave requests. He also had authority to discipline but testified that he never actually exercised that authority. More recently Black was a leader in the large machine department but in June 2000 he was designated “night shift supervisor” in that department (although the record establishes that Black’s job duties did not change when he was reclassified from “leader” to “supervisor” in 2000).

Superintendent Rodney Leach informed Black in October 2001, that he had been demoted and thereafter assigned him to operate a machine. Leach assumed the duties previously performed by Black and Black has not assigned work to other employees since that time.⁸

The parties stipulated that Black now has none of the Section 2(11) indicia of a supervisor and, based on the record, I accept that stipulation and find that Black is an eligible voter.

Changes in the Solartec Operation

When my initial Decision and Direction issued there were some 40 employees at Solartec. By the close of the instant hearing in February 2002 only 14 employees, along with Solartec Plant Manager Steve Wright, were still at Solartec. There is no persuasive record evidence to establish the likelihood of new work orders reversing this staffing situation in the near future.

evidence to support that stipulation and, accordingly, I accept it.

⁸ Tom Furlong, Sr. currently holds the title “Superintendent of Large Machine Department”. On the last day of the re-opened hearing the parties stipulated that Furlong is a 2(11) supervisor. Based on the record evidence of Furlong’s authority and his exercise of that authority, I accept the stipulation.

There are two shifts at Solartec, a day shift and an afternoon shift. The staffing in the various Solartec department is as follows:

Solartec's fixture assembly department now consists of Jerry Ruseski, Tim Donnalley and Jim Greenmayer. They spend nearly all their working time engaged in manual labor. All three are highly-skilled and have accumulated years of experience. Both parties assert that none of these three individuals are 2(11) supervisors. To the extent they require any supervision or direction, that is apparently provided by Plant Superintendent Steve Wright. Based on the entire record, I conclude, in agreement with the parties, that Ruseski, Donnalley and Greenmayer are not 2(11) supervisors and are eligible to vote in the election directed herein.

Solartec's die tryout department now consists of only three persons, Mike Lutz, Mercer (first name unknown) and Monty Deryter. Again, all three employees spend virtually all of their time performing hands-on physical work. All three employees are highly skilled and have years of experience.⁹

Solartec's die assembly department now consists of Dan Shaver, Roger Sanor and Jeff Chamberlain. All three are highly skilled and possess years of experience. The Employer had previously asserted that Shaver and Sanor were 2(11) supervisors. However, in view of the

⁹ One of the three individuals retained in the Solartec tryout department formerly held the title "Tryout Department Supervisor". In June or July 2000, John Sekely informed Lutz that he no longer had that title.

Lutz, who is a thirteen year employee of Solartec, testified that he never held the title of "crew leader" before being promoted to supervisor. As a supervisor Lutz assigned new employees to work various presses in the tryout department based on their progress in learning the job. Lutz was not involved in hiring or disciplining any Solartec employee. Although Lutz was not involved in the layoff decisions that impacted the tryout department in December 2000, he was involved in evaluating employees in 2001. Thus Plant Superintendent Steve Wright told Lutz to evaluate employees in the department. He did so and made recommendations for pay raises. These he submitted to Wright, and all these recommendations were approved by John Sekely. Prior to the layoffs in 2000, Lutz had also approved and signed off on overtime forms on at least ten occasions.

As noted, the record shows that as of the time of the re-opened hearing Lutz no longer held the title "supervisor," no employees worked for him, and all his time was spent on rank-and-file work. The parties agreed at the hearing that Lutz is not now a 2(11) supervisor. Based on the record evidence I accept that agreement. However, I take administrative notice that an unfair labor practice charge was filed after close of the instant hearing which involved Lutz. That charge, filed on May 3, 2002, alleges that Lutz was unlawfully terminated on April 29, 2002. Lutz' eligibility will turn ultimately on the merit of that charge.

drastic reduction in staffing levels, the Employer now agrees with Petitioner that there are no 2(11) supervisors in the Die Assembly Department. When supervision or direction is necessary Plant Superintendent Steve Wright apparently provides it. Based on the record, I conclude, in agreement with the parties that Shaver and Sanor are not Section 2(11) supervisors, and accordingly they are eligible to vote in the election directed herein.

Finally, Solartec's CNC mill department now has five employees. Previously, there had been three leaders and nine employees on two shifts. Bill Gorby and Terry Vickers are two of the five employees now operating machinery full-time in the CNC department. Whereas Steve Wright had formerly delegated some supervisory responsibilities to the leaders in the CNC department, he now provides direct supervision for the remaining five employees. Neither party contends that either Gorby or Vickers are currently Section 2(11) supervisors. Based on the record, and in agreement with the parties, I find that neither Gorby nor Vickers are Section 2(11) supervisors and, accordingly, they are eligible to vote in the election directed herein.

Final Conclusions and Findings

Having discussed the changes that have been made at Sekely and Solartec since the date of the initial Decision and Direction, as well as the agreements of the parties as to the inclusion or exclusion of individuals whose duties have also changed and whose status therefore was in doubt, I turn now to those remaining eligibility questions that the parties have not been able to resolve by their agreements.

In brief, the remaining eligibility questions relate to the six leader/supervisors still employed at the Sekely die construction department, and the status of Jeff Foster who had the title of Small Machines Department Leader prior to February 2001.

Turning first to Foster, I had noted previously that he holds a supervisory title in the small machine department. In addition to Foster there are ten (10) employees in that department. Four of those employees are primarily assigned to creating computer programs for the operation of the CNC machines. The other six employees run various machines and other equipment. Foster had been titled a “Small Machines Leader” prior to February 14, 2001. Foster has worked in the small machine department for the past six years, and he now reports directly to Plant Manager Dave Herbert. The record indicates that the four programmers in this department would have no supervision if Jeff Foster is not their supervisor. Foster makes all the work assignments for the programmers. When Foster goes on vacation he leaves a “line-up” for Powers, the senior programmer. Otherwise, when Foster is not present, Powers will make decisions for the other programmers, because he is the senior programmer.

Foster now supervises the second shift in the small machine department because Rich Boyle (former second shift leader in the department) has been assigned to a machine.¹⁰ Evidence received during the reopened hearing indicates that Foster is responsible for submitting an annual budget for the Small Machine Department. Testimony at the re-opened hearing also shows that all diemakers receive training in the Small Machine Department. Foster, however, will send a die-maker back to the die construction floor before he has finished his training, if he is unable to master the operation of the computers, or if he is unable to handle the pressure of running the CNC controlled machines.

Foster reports to Plant Manager Dave Herbert. Although Herbert sets the calendar priorities, based on customer due dates, for the small machine department, Foster testified that Herbert does not have the technical competence to supervise the ten machinists in the Small

¹⁰ As noted previously, at p. 10-11, I have accepted the parties’ stipulation that Boyle currently has no indicia of 2(11) authority and thus he is an eligible voter.

Machine Department. Based on the foregoing and the record as a whole, and particularly given his exercise of discretion in assigning employees, I find Foster to be a Section 2(11) supervisor.

Turning now to the Sekely Die-Construction Department and the six remaining leader/supervisors in that department whose status is in issue, I make the following findings. Each of the remaining six bays – as noted previously, before February 14, 2001 there were ten bays – has a leader and eight (8) employees. Further, Jerry Satterfield, formerly one of two Die Construction foremen, is now the Die Construction Superintendent. Homer Sanor, the former Superintendent, retired at the beginning of this year. Paul Leider, who formerly served as the other Die Construction foreman, is now one of the six leader/supervisors, along with Steve Scheiben, Don McKinney, David Kettler, Bud Sanor and Rick Wilson. Approximately thirty-eight fewer employees now work in the Die Construction department compared with the staffing level at the time of my original decision.

In support of its contention that the six leaders in die-construction are 2(11) supervisors the Employer advances several arguments and relies on a number of Board and Court cases, including **Kentucky River, 121 S. Ct. 1861 (2551).**

The transcript read as a whole, and updated by testimony at the re-opened hearing, establishes the following:

(a) Overall work priorities in the die-construction department essentially are established by management rather than crew leaders. As noted previously, Satterfield or another manager, will inform a crew leader of the date when a die must be delivered to the try-out department. Satterfield visits each bay at least weekly to satisfy himself as to the crews' progress in meeting that schedule.

(b) Other than those instances when crew members go to the small machine department to continue work begun in die-construction, Satterfield rather than a crew leader would assign crew members to work temporarily outside their department.

(c) As noted previously, crew leader Scheiben testified that there generally is an established order to making a die. However, the process also depends, inter alia, on the machines that the Employer wants to keep busy and their availability, the materials that are on hand, as well as the skills and experience of particular crew members. It is worth noting that the availability of machines and materials – matters over which the leaders appear to have little control – may well determine the process ultimately used to manufacture a particular die.

(d) Although there is testimony by crew leaders that the experience and skills of crew members may play a part in deciding the assignment of particular tasks, the reality at Sekely is that, other than apprentices, all crew members are highly skilled and experienced, and all know how to perform the work. In this connection, testimony of crew leaders and die makers given at the initial hearing, and not contradicted by testimony at the re-opened hearing, indicates that to a great extent crew members participate in determining their own work assignments. Thus crew leaders testified that often they let crew members decide for themselves which dies they would work on . And, as noted previously, at the re-opened hearing crew leader Scheiben testified that he kept a die for himself only about thirty percent of the time and made the necessary assignments in connection with that die. The other dies he received he delegated to the most experienced die makers in his crew.

As for determining which employees would work together on a particular assignment, it appears that leaders often are simply accommodating employee stated preferences not to work with certain other crew members. This indicates that crew members not only have a say in the

tasks they will perform but also who they want to work with to get the job done.

(e) As noted previously, die-construction leader Rick Wilson testified at the reopened hearing that only after Petitioner filed its petitions in May 2000, was he told by management that he now had authority to discipline crew members. Wilson's testimony is consistent with that of one-time tryout department leader Donald Miller who testified that in the summer of 2000 the Employer advised him that he had authority to discipline and grant overtime. Prior to the 2000 summer meeting foremen would line-up overtime volunteers (overtime at the Employer is not mandatory). After the summer 2000 meeting, leaders were delegated the authority to inquire of employees whether they wanted to work overtime.

As for the purported authority to discipline, crew leader Wilson testified that he has never exercised any such authority and he has no knowledge of any other crew leader in die-construction issuing discipline to any employee. As for overtime, Wilson testified that he recommended overtime on three occasions during the past year, but in each instance overtime was actually authorized by then superintendent Homer Sanor.

In passing, I note that the transcript from the initial hearing held here is replete with testimony that employees could and did disregard directions of crew leaders and did so without fear of retribution or discipline. Thus, former crew leader Jesse Rufener testified that when one of his crew members did not do his job, was not dependable, and worked slowly, Rufener's response was simply to avoid giving that crew member tasks that required a high degree of attention or that had to be done quickly.

Large machine department employee Robert Lanzendofer testified that he would disregard the direction of a leader "because I thought I knew better, which I did." Die maker Paul McCoy testified that leaders and crew members work together as a group and "we don't

really put no big distinction between them, or we never have till now.”

And, as noted previously, testimony given at the reopened hearing, while establishing that the Employer purported to give crew leaders greater authority over crew members, does not establish that this was anything more than a matter of appearances versus reality. As noted, there is no testimony or other evidence that any die-construction department leader has effectively disciplined a crew member. Further, the testimony of former try-out department leader Miller indicates that he never wrote up an employee even after the summer of 2000, and that he understood that any “write ups” would have to go to a higher authority to be investigated and implemented. Further, although Miller testified he knew he had authority to suspend an employee, he also knew he had to discuss the matter with a foreman or manager before telling the employee he was suspended, and that his decision to suspend could be overruled.

In light of the above and of the transcript as a whole I conclude that the Employer has failed to meet its burden of proof that, under Kentucky River, the six Die-Construction department leaders are 2(11) supervisors who should be held ineligible to vote. In sum, I find that these leaders – and indeed the record would support a finding that all the Employer’s crew leaders – are no more than true “lead persons” who by reason of their skills and tenure with the Employer enjoy the Employer’s particular trust and confidence. Given the relatively high skill levels of all crew members, the most that can be said of the leaders here is that they act as facilitators to make sure that the priorities and schedules set by management are actually met. Further, to the extent at times they make specific assignments to certain crew members, it is fair to say that such assignments are for the purpose of completing specific discrete tasks – in no sense can it be said that the decision making that informs such assignments is reflective of the type of independent judgment routinely exercised by statutory supervisors.

Finally, I conclude that the other arguments and authority urged by the Employer to support its claim of 2(11) status for these individuals is unpersuasive and inapposite.

Thus, the Employer contends that Leider, Scheiben, McKinney, Kettler, Sanor and Wilson must be 2(11) supervisors, otherwise Superintendent Satterfield would be supervising up to forty-eight employees. In support of its position the Employer relies on **NLRB v. Pilot Freight Carriers**, 558 F.2d 205 (4th Cir. 1977), denying enf. **Pilot Freight Carriers**, 221 NLRB 1026 (1975). I find the Employer's reliance on **Pilot** is misplaced.

Although the circuit court ultimately disagreed, in **Pilot** the Board found that one man, the terminal manager, could supervise forty-eight employees, including the dispatchers and truck drivers.¹¹ I note the facts in **Pilot** are quite different from those of the instant case. First, the die construction employees here are confined to the shop floor, not itinerant, as were truck drivers in **Pilot**. Second, Satterfield is responsible only for the die construction department, and does not bear additional responsibility for supervising office clerks and warehouse clerks, as did the terminal manager in **Pilot**. Third, unlike the drivers' situation in **Pilot**, each of the six bays here has a crew leader who can assist in problem solving, even if such leaders are not Section 2(11) supervisors. Indeed, Paul Leider who currently is a leader in the department was formerly, like Satterfield himself, a department foreman. This further buttresses the conclusion that there is much less need for direct supervision in die-construction because of the high skill levels and substantial experience of all the leaders and crew members.

The Employer also relies on **Spentonbush/Red Star v. NLRB**, 106 F.3d 484, (2nd Cir. 1997) denying enforcement of **Spentonbush/Red Star Companies**, 319 NLRB 988 (1985) in support of its argument regarding responsible direction. There the court reversed the Board's

¹¹ I am, of course, required to apply Board precedent unless and until it is rejected by the Supreme Court. **Hillhaven Rehabilitation Center**, 325 NLRB 202, fn. 3 (1997).

finding that tug-boat and barge captains were not Section 2(11) supervisors. The court noted the difference between the tug captains and the lead person in a shore-based enterprise by quoting the Supreme Court in **Southern Steamship Co. v. NLRB**, 216 US 31, 38:

Ever since men have gone to sea, the relationship of master to seaman has been entirely different from that of employer to employee on land. The lives of passengers and crew, as well as the safety of ship and cargo, are entrusted to the master's care. Everyone and every thing depend on him. He must command and the crew must obey.

It goes without saying that Sekely is a "shore-based" enterprise, and that alone distinguishes it from **Spentonbush**. Furthermore, the tug captains were subject to numerous statutes and regulations, the violation of which would lead to suspension and other penalties. The leaders at Sekely are not subject to any similar statutory or regulatory scheme.

Summary of Agreed-Upon Individuals

At the reopened hearing the parties agreed on the inclusion or exclusion of a number of individuals. Based on the record, I have accepted the parties' agreement. A summary of those individuals is set forth below:

Solartec unit inclusions:

Jerry Ruseski
Tim Donnalley
Jim Greenmayer
Mike Lutz
Dan Shaver
Roger Sanor
Steve Zimmerman
Bill Gorby
Terry Vickers

Solartec unit exclusions:

Steve Wright
John Sekely

Sekely unit inclusions:

Mitch Miller
Jerry McBride
Dale Kaurich
Don Miller
Bill Hawkins
Dave Sebastian
Larry Pogue
Bob McPherson, Jr.
Curt Briggs
Dennis Davis
Rich Boyle
Arch Black

Sekely unit exclusions:

Dan Davis
Robert Findling
Cliff Mulhman
Rohn Riley
Dale Metzger
James Sekely Jerry Satterfield
Tom Furlong, Sr.
Dave Herbert

In addition, and as noted previously, I have found that Jeff Foster is a 2(11) supervisor and is thus ineligible to vote. On the other hand, the six crew leaders in the Sekely die-construction department are employees eligible to vote in the election directed here.

DIRECTION OF ELECTIONS

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as

such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA.**

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969).** Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994).** The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by August 26, 2002.

Dated at Cleveland, Ohio this 12th day of August, 2002.

/s/ Frederick J. Calatrello

Frederick J. Calatrello, Regional Director
National Labor Relations Board
Region 8

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